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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 MAXUM CASUALTY INSURANCE
8 COMPANY,

9 Plaintiff(s),

10 v.

11 STEVEN T. TAYLOR, et al.,

12 Defendant(s).

Case No. 2:18-CV-1866 JCM (CWH)

ORDER

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14 Presently before the court is the matter of *Taylor et al. v. Kilroy et al.*, case number 2:19-
15 cv-00081-JCM-CWH (“Taylor/Kilroy counterclaim”), which has been consolidated with *Maxum*
16 *Casualty Insurance Company v. Taylor et al.*, case number 2:18-cv-01866-JCM-CWH
17 (“declaratory action”). (*Taylor*, ECF No. 27); (*Maxum*, ECF No. 30).¹

18 Pending before the court is plaintiffs/counterclaimants Steven Taylor (“Mr. Taylor”) and
19 Mary Taylor’s (“Mrs. Taylor”) (collectively “Taylors”) motion to remand. (*Taylor*, ECF No. 9).
20 Counterdefendants Maxum Casualty Insurance Company and Maxum Specialty Insurance Group
21 (collectively “Maxum”) filed a response (*Taylor*, ECF No. 23), to which the Taylors replied
22 (*Taylor*, ECF No. 25).

23 Also before the court is defendant/counterclaimant Robert Kilroy’s motion to remand.
24 (*Taylor*, ECF No. 11). Maxum filed a response (*Taylor*, ECF No. 24), to which Kilroy replied
25 (*Taylor*, ECF No. 26).

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28 ¹ For ease of reference, citations to the Taylor/Kilroy counterclaim record will be
indicated by “(*Taylor*, ECF No. ____).” Citations to the declaratory action record will be
indicated by “(*Maxum*, ECF No. ____).”

1 Also before the court is Maxum's motion to dismiss. (*Taylor*, ECF No. 5). The Taylors
2 filed a response (*Taylor*, ECF No. 10), to which Kilroy joined (*Taylor*, ECF No. 14), and to
3 which Maxum replied (*Taylor*, ECF No. 22).

4 **I. Background**

5 The court has extensively discussed the factual and procedural background of this action
6 in prior orders. (*Maxum*, ECF Nos. 31, 43). Because these events are well known to the parties,
7 the court will discuss only those relevant to the instant motions, as follows:

8 On or about June 4, 2008, Mr. Taylor and Kilroy's vehicles collided into each other,
9 causing significant injury to Kilroy. (*Maxum*, ECF Nos. 10, 13, 15, 16). At the time of the
10 collision, Mr. Taylor had an insurance policy with Maxum. *Id.* The policy provided a
11 \$1,000,000 limit for bodily and property damages, per accident. *Id.*

12 On January 23, 2009, the Taylors commenced an action against Kilroy in Nevada state
13 court for personal injuries ("underlying action"). *Id.* After four years of litigation, Kilroy's
14 counterclaims against Mr. Taylor were the only issues remaining in the case. *Id.* In May 2013,
15 the matter went to trial and the jury found that Mr. Taylor and Kilroy were equally liable for the
16 collision. *Id.* The jury awarded \$35,000 to Mr. Taylor and \$75,000 to Kilroy. (*Maxum*, ECF
17 No. 1).

18 Following the jury verdict, the Taylors and Kilroy filed motions for new trial. (*Maxum*,
19 ECF Nos. 10, 12, 15). The state court granted the motions, holding that the jury's liability
20 determination was supported by adequate evidence, but that the jury failed to follow instructions
21 when calculating damages. *Id.* The Taylors appealed and the Nevada Court of Appeals affirmed
22 the state court's order. *Id.*

23 After the Nevada Court of Appeals remanded the case, the parties stipulated to a binding
24 arbitration. *Id.* The arbitration agreement provided that the scope of arbitration was limited to
25 the issue of damages and that Kilroy would subsequently be able to file a motion for interest,
26 costs, and attorney's fees. *Id.* In June 2017, the arbitrators ultimately found total damages in the
27 amount of \$6,758,293.76, for which Mr. Taylor was 50% liable. *Id.* In July 2017, the state court
28 entered judgment consistent with the results of the arbitration. *Id.*

1 On July 12, 2017, Maxum filed a motion to interplead funds in the amount of \$1,000,000.
2 (*Maxum*, ECF No. 10-3). The Taylors and Kilroy filed a countermotion requesting that the court
3 adjudicate Maxum's duties under the insurance policy. (*Maxum*, ECF Nos. 10-4, 10-5). On
4 September 28, 2017, the state court issued an order (1) dismissing Maxum's motion as being
5 procedurally defective, (2) exercising general jurisdiction over Maxum, and (3) holding that the
6 insurance policy requires Maxum to pay the \$1,000,000 limit, with interest on the entire
7 judgment, costs, and attorney's fees. (*Maxum*, ECF No. 10-7).

8 Maxum moved for reconsideration of the state court's September 28, 2017 order.
9 (*Maxum*, ECF No. 10-8). The state court denied the motion for reconsideration. (*Maxum*, ECF
10 No. 10-9).

11 On October 2, 2018, Maxum initiated the declaratory action seeking a declaration of its
12 rights and duties in connection with the insurance policy. (*Maxum*, ECF No. 1). The Taylors
13 and Kilroy both filed motions to dismiss. (*Maxum*, ECF Nos. 10, 12).

14 On December 21, 2018, the Taylors and Kilroy filed the Taylor/Kilroy counterclaim²
15 against Maxum in Nevada state court alleging five causes of action: (1) breach of contract; (2)
16 breach of the implied covenant of good faith and fair dealing; (3) violation of the Nevada Trade
17 Practices Act, NRS 686A.310, *et seq.*; (4) punitive damages; and (5) declaratory relief. (*Taylor*,
18 ECF No. 1). Maxum removed the Taylor/Kilroy counterclaim on January 11, 2019. *Id.* On
19 March 26, 2019, the Taylor/Kilroy counterclaim was consolidated with the declaratory action.
20 (*Taylor*, ECF No. 27); (*Maxum*, ECF No. 30).

21 On May 10, 2019, the court entered an order granting the Taylors and Kilroy's motions to
22 dismiss the declaratory action ("dismissal order" or "May 10, 2019 order"). (*Maxum*, ECF No.
23 31). Pursuant to the court's December 3, 2019 order (*Maxum*, ECF No. 43) granting Maxum's
24 subsequent motion for clarification (*Maxum*, ECF No. 33), the Taylor/Kilroy counterclaim
25 remains before the court.

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28 ² Maxum contends that it was never formally joined as a party in the underlying state
action, such that the Taylor/Kilroy "counterclaim" is not a counterclaim at all. (*Taylor*, ECF
Nos. 23, 24); (*Maxum*, ECF No. 33). The court will address the merits of this argument below.

1 Now, the Taylors and Kilroy request that the Taylor/Kilroy counterclaim be remanded to
2 state court. (*Taylor*, ECF Nos. 9, 11). Maxum requests that the Taylor/Kilroy counterclaim be
3 dismissed. (*Taylor*, ECF No. 5).

4 **II. Legal Standard**

5 Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*,
6 437 U.S. 365, 374 (1978). “A federal court is presumed to lack jurisdiction in a particular case
7 unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of Colville*
8 *Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989).

9 Upon notice of removability, a defendant has thirty days to remove a case to federal court
10 once he knows or should have known that the case was removable. *Durham v. Lockheed Martin*
11 *Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006) (citing 28 U.S.C. § 1446(b)(2)). Defendants are not
12 charged with notice of removability “until they’ve received a paper that gives them enough
13 information to remove.” *Id.* at 1251.

14 Specifically, “the ‘thirty day time period [for removal] . . . starts to run from defendant’s
15 receipt of the initial pleading only when that pleading affirmatively reveals on its face’ the facts
16 necessary for federal court jurisdiction.” *Id.* at 1250 (quoting *Harris v. Bankers Life & Casualty*
17 *Co.*, 425 F.3d 689, 690–91 (9th Cir. 2005) (alterations in original). “Otherwise, the thirty-day
18 clock doesn’t begin ticking until a defendant receives ‘a copy of an amended pleading, motion,
19 order or other paper’ from which it can determine that the case is removable. *Id.* (quoting 28
20 U.S.C. § 1446(b)(3)). Further, Title 28 U.S.C. § 1446(c)(1) provides that “[a] case may not be
21 removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than
22 1 year after commencement of the action, unless the district court finds that the plaintiff has
23 acted in bad faith in order to prevent a defendant from removing the action.” 28 U.S.C.
24 § 1446(c)(1).

25 Title 28 U.S.C. § 1450 provides that, whenever an “action” is removed from state court to
26 federal court, “[a]ll injunctions, orders, and other proceedings had in such action prior to its
27 removal shall remain in full force and effect until dissolved or modified by the district court.” 28
28 U.S.C. § 1450. What constitutes a cognizable legal action in state court is determined by

1 reference to the state’s own laws and rules of procedure. *See Bush v. Cheaptickets, Inc.*, 425
2 F.3d 683, 686 (9th Cir. 2005). A federal court must therefore “honor state court rules governing
3 commencement of civil actions when an action is first brought in state court and then removed to
4 federal court” *Id.* (citing and quoting with approval *Cannon v. Kroger Co.*, 837 F.2d 660,
5 664 (4th Cir.1988)).

6 § 1450 was designed “to deal with the unique problem of a shift in jurisdiction in the
7 middle of a case which arises whenever cases are removed from state to federal court.” *Granny*
8 *Goose Foods, Inc. v. Bhd. of Teamsters and Auto Truck Drivers Local No. 70 of Alameda Cnty.*,
9 415 U.S. 423, 435 (1974). As the Supreme Court found in *Granny Goose*, the statute serves to
10 promote the judicial economy “by providing that proceedings had in state court shall have force
11 and effect in federal court, so that pleadings filed in state court, for example, need not be
12 duplicated in federal court.” *Id.* at 435–36 (footnote omitted). § 1450 allows a federal court to
13 “take[] the case up where the State court left it off” after removal. *Id.* at 436 (quoting *Duncan v.*
14 *Gegan*, 101 U.S. 810, 812 (1880)).

15 Although primarily enacted as a means to promote the judicial economy, § 1450 also
16 authorizes district courts to dissolve or modify state court orders entered prior to removal. After
17 a case has been removed to federal court, “it is settled that federal rather than state law governs
18 the future course of proceedings, notwithstanding state court orders issued prior to removal.”
19 *Granny Goose*, 415 U.S. at 437.

20 A plaintiff may challenge removal by timely filing a motion to remand. 28 U.S.C.
21 § 1447(c). On a motion to remand, the removing defendant faces a strong presumption against
22 removal, and bears the burden of establishing that removal is proper. *Sanchez v. Monumental*
23 *Life Ins. Co.*, 102 F.3d 398, 403–04 (9th Cir. 1996); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566–67
24 (9th Cir. 1992).

25 **III. Discussion**

26 The Taylors and Kilroy make three separate arguments for why the Taylor/Kilroy
27 counterclaim should be remanded. The Taylors argue that Maxum’s notice of removal is
28 ineffective because Maxum did not remove the entire underlying action in which the

1 Taylor/Kilroy counterclaim was filed. (*Taylor*, ECF No. 9). Maxum responds that the filing of
2 the Taylor/Kilroy counterclaim commenced a new action and that the notice of removal was thus
3 proper. (*Taylor*, ECF No. 23).

4 Kilroy contends that Maxum's notice of removal was untimely because Maxum first
5 appeared in the underlying state court action on July 12, 2017 but did not remove the
6 Taylor/Kilroy counterclaim until January 11, 2019. (*Taylor*, ECF No. 11). Kilroy also argues
7 that Maxum lacked statutory authority to remove this counterclaim because Maxum is not a
8 defendant in the underlying action. *Id.* Maxum responds that it was never made a party to the
9 underlying action, such that the timeline for removal didn't start running until the Taylor/Kilroy
10 counterclaim was filed on December 21, 2018. (*Taylor*, ECF No. 24). Maxum further responds
11 that it had authority to remove this case because the Taylor/Kilroy counterclaim commenced a
12 new action against Maxum as a defendant. *Id.*

13 On September 28, 2017, the state court judge handling the underlying action entered an
14 order stating, in relevant part:

15 Maxum has appeared as a party in this case, and has subjected itself voluntarily to
16 the court's general jurisdiction. Although Maxum claims it was merely trying to
17 pay the policy limits of the insurance policy at issue, the court notes that Maxum
18 added itself to the caption of the case, and further finds that it requested further
relief of this court, to include injunctive relief far beyond merely paying its policy
limits into the court, and asked the court to enjoin the parties from litigating
Maxum's responsibilities under the policy.

19 In attempting to invoke Rule 22, Maxum has indicated that it has a limited stake
20 to pay, and so invited Kilroy's countermotion, as well as Taylor's joinder to the
21 countermotion. Maxum, having appropriated to itself the status of a party in this
22 case, to include adding itself to the case caption has placed itself in the
jurisdiction of this court, and has placed at issue its obligations under the
insurance policy, subject to the jurisdiction of this court. This court therefore has
jurisdiction over all issues having to do with the Maxum policy of insurance.

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24 (*Taylor*, ECF No. 11, Exhibit L). The state court judge explicitly found that Maxum, by its own
25 conduct, made itself a party to the underlying action. *Id.* Based on that finding, the state court
26 judge then determined Maxum's further obligations to Kilroy under the insurance policy. *Id.*

27 Pursuant to § 1450, that order is to be given full force and effect until dissolved or
28 modified by the district court. In light of the primary purpose of § 1450—to promote the judicial

1 economy—the court declines to second-guess the state court judge’s determination that Maxum
2 became a party to the underlying action when it filed its motion to interplead funds on July 12,
3 2017. That finding was integral to the state court judge’s grant of Kilroy’s countermotion, and
4 was likely the basis for which the Taylors and Kilroy were given leave to amend their respective
5 pleadings with the counterclaims now alleged in the Taylor/Kilroy counterclaim. To upend that
6 finding now would call into question several of the state court judge’s rulings and further delay
7 the timely resolution of this action.

8 Because Maxum became a party to the underlying action on July 12, 2017 but did not
9 remove the Taylor/Kilroy counterclaim until January 11, 2019, its notice of removal was
10 untimely filed. Pursuant to § 1446(c)(1), remand is appropriate here because: (1) jurisdiction
11 over this matter is conferred by § 1332; (2) Maxum filed its notice of removal approximately
12 eighteen months after it became a party to the underlying action; and (3) there has been no
13 showing that either Kilroy or the Taylors acted in bad faith to prevent Maxum from removing
14 this action. *See* 28 U.S.C. § 1446(c)(1). Accordingly, Maxum has not met its burden of showing
15 that removal was proper, and the Taylor/Kilroy counterclaim will be remanded to state court.

16 Having now determined that the Taylor/Kilroy counterclaim will be remanded based on
17 the untimeliness of Maxum’s notice of removal, the court declines to address whether remand
18 would also be appropriate based on Maxum’s purported failure to remove the entire underlying
19 action. The court also declines to address Kilroy’s argument that Maxum lacked the authority to
20 remove this action under Title 28 U.S.C. § 1441 because, regardless of whether Maxum had the
21 authority to remove, remand is warranted due to the untimeliness of the notice of removal.

22 **IV. Conclusion**

23 Accordingly,

24 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the Taylors’ motion to
25 remand (*Taylor*, ECF No. 9) be, and the same hereby is, GRANTED.

26 IT IS FURTHER ORDERED that Kilroy’s motion to remand (*Taylor*, ECF No. 11) be,
27 and the same hereby is, GRANTED.

1 IT IS FURTHER ORDERED that Maxum's motion to dismiss (*Taylor*, ECF No. 5) be,
2 and the same hereby is, DENIED as moot.

3 IT IS FURTHER ORDERED that the matter of *Taylor et al. v. Kilroy et al.*, case number
4 2:19-cv-00081-JCM-CWH, be, and the same hereby is, REMANDED.

5 The clerk shall close the case accordingly.

6 DATED December 6, 2019.

7 
8 UNITED STATES DISTRICT JUDGE